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Office-Supreme Court, U.S.
FILED
JUL 16 1984
ALEXANDER L. STEVAS,
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GLADYS L. TRAPF,
Appellant,

vs.

OSCAR LOHR and GEORGE C. LEACHMAN,
COLLECTOR OF REVENUE FOR ST. LOUIS COUNTY, MISSOURI,
Appellees.

On Appeal From The Supreme Court Of The State Of Missouri

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Section 140.170, Revised Statutes of Missouri, which provides for administrative sale of a taxpayer's property by a county, with no notice to the property owner other than notice by publication, unconstitutionally deprives the appellant of her Fourteenth Amendment right to due process.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Circuit Court of St. Louis (App. A, infra, A-1) is not reported. The opinion of the Court of Appeals (App. B, infra, A-3) is also not reported because the court transferred the cause to the Missouri Supreme Court. The opinion of the Missouri Supreme Court (App. D, infra, A-14) is reported at 664 S.W.2d 414.

JURISDICTION

The judgment of the Circuit Court (App. A, infra, A-1), quieting title of the subject property in appellant, was entered

February 25, 1982. Appellees appealed to the Missouri Court of Appeals, which transferred the cause, after hearing, to the Missouri Supreme Court. The Missouri Supreme Court's Order, upholding the constitutional validity of Section 140.170, R.S.Mo., and reversing the judgment of the trial court, was entered on March 20, 1984. Appellant's Motion for Rehearing was denied on April 16, 1984. A Notice of Appeal to this Court was filed on July 9, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall...deprive any person of life, liberty, or property without due process of law.

Section 140.170 R.S.Mo. provides in pertinent part:

> The County Collector shall cause a copy of the list of delinquent land lots to be printed in some newspaper of general circulation published in the county, for three consecutive weeks, one insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth Monday in August.

STATEMENT

1. This case involves the question of whether Section 140.170 R.S.Mo., which provides that a county can sell a delinquent taxpayer's property to satisfy the tax lien, while only giving notice to the property owner by newspaper publication, violates the due process clause of the Fourteenth Amendment.

2. The instant suit arose in 1979 when appellee George C. Leachman, Collector of Revenue for St. Louis County, Missouri, sold a parcel of real estate belonging to appellant, to

appellee Oscar Lohr. This August 27, 1979 tax sale was allegedly conducted pursuant to the provisions of Chapter 140 R.S.Mo. Appellant Gladys L. Trapf filed suit in the Circuit Court of St. Louis County to quiet title to the property. She claimed that the notice of sale published by appellee Collector was defective as a matter of law in not conforming to the provisions of Chapter 140, R.S.Mo. Appellant further contended that Section 140.170 R.S.Mo. is unconstitutional on its face, and as applied to appellant, because it only required notice to the property owner by publication, and therefore deprived appellant of her property without due process of law.

At trial, conflicting evidence was submitted on the issue of whether or not appellant ever received any notice of an impending tax sale. Appellant then presented evidence to show that she first became aware of the delinquency on her property in 1978, through her ex-husband, and that she thereupon wrote a letter to the appellee Collector requesting advice on how to clear up the problem. She further submitted evidence that she paid part of the delinquency in April, 1979, purportedly pursuant to an agreement with appellee Collector.

Appellee presented evidence that notice was sent in 1978, by ordinary mail, to inform plaintiff that her property was subject to be sold at an August, 1978 tax sale. However, no evidence was presented to indicate that plaintiff received actual notice, by mail or otherwise, of the 1979 sale.

The trial court ordered title quieted in favor of appellant, solely on the basis that the notice given to appellant before the sale was defective as a matter of law, in that it did not conform to Chapter 140, R.S.Mo.

Appellees appealed, and the Court of Appeals reversed, holding that the notice was not defective as a matter of law and that the notice given to appellant did not deprive her of her Fourteenth Amendment due process rights. However, that court granted appellant's application for transfer, on the basis

of the constitutional questions raised by appellant, and because of the constitutional questions raised by this Court's decision in *Mennonite Board of Missions v. Adams,* 462 U.S. ____, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983).

The Supreme Court of Missouri reversed the trial court's decision, holding that the notice given was sufficient under Missouri law and that the procedures actually used by appellee Collector gave appellant all the notice the Collector was constitutionally required to give.

THE QUESTION IS SUBSTANTIAL

The Missouri Supreme Court has upheld the constitutional validity of a statute, and of procedures employed by a County Collector, in the face of a clear mandate to the contrary from this Court. In view of the decision in *Mennonite Board of Missions v. Adams,* 462 U.S. ____, 108 S.Ct. 2706, 77 L.Ed.2d 180 (1983), it can hardly be argued that a statute which provides for sale of property with nothing more than published notice of the sale to the property owner is not unconstitutional on its face. In *Mennonite* this Court held that a tax sale statute which failed to provide for mailed notice of the sale to mortgagees was unconstitutional. 103 S.Ct. at 2712. It is clear that a mortgagor, such as the appellant, merits at least as much due process protection accorded to the mortgagee in *Mennonite. Harris v. Gaul,* 572 F.Supp. 1554, 1560 (E.D. Ohio 1983). The mortgagor is entitled to notice reasonably calculated to inform her of the pending tax sale. *Id.* Notice by mail or other means which are as certain to ensure actual notice is the minimum constitutional prerequisite which must be given to a property owner before his property can be wrenched away by a tax sale. *Mennonite,* 103 S.Ct. at 2712. Notice by publication is not reasonably calculated to apprise parties of the pendency of the action. *Mullane v. Central Hanover Bank & Trust,* 339 U.S. 306, 314 (1950). Such reasonable calculation is an "elementary and fundamental requirement of due process." *Id.*

The Missouri Supreme Court erred in attempting to distinguish the instant case from the clear mandate of *Mennonite* by holding that the procedures actually used by appellee Collector passed constitutional muster. The court mistakenly felt that appellant's knowledge of her delinquency and the letter she may have received informing her of a possible tax sale in August, 1978 reduced appellee's constitutional obligations. But, "knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending." *Mennonite,* 103 S.Ct. at 2712. Simply sending a notice of pending sale to the most convenient address does not necessarily meet due process prerequisites of notice. *Federal Deposit Insurance Corporation v. Morrison,* 568 F.Supp. 1240, 1245 (1983). In addition, particularly extensive efforts to provide notice may often be required when the state is aware of a party's inexperience. *Memphis Light, Gas & Water Division v. Craft,* 436 U.S. 1, 13-15 (1978). In the instant case, appellant's letter to the Collector asking for help should have put the appellee Collector on notice that she was inexperienced.

The case at bar raises the question of just what is actual notice, within the meaning of *Mennonite,* sufficient to protect a property owner's due process rights. In the instant case, appellant may have recieved notice of a possible sale to take place in August, 1978. The actual sale which is the subject of this litigation took place in August, 1979. In between these two dates, the appellant made a payment on the taxes which were the reason for the sale. In addition, no evidence was offered to show that appellee Collector ever sent notice of the August, 1979 sale. This is not notice sufficient to protect a property owner's due process rights within the meaning of the *Mennonite* case. When notice is a person's due, mere gestures of notice do not constitute due process. *Covey v. Town of Somers,* 351 U.S. 141, 146-147 (1956). Reasonable diligence must be used to give notice to a property owner, or his due process right to notice is abridged. *Federal Deposit Insurance Corporation,* 568 F.Supp. at 1244.

In light of the Missouri Supreme Court's apparent end run around the intent of *Mennonite Board of Missions,* this Court should note probable jurisdiction to decide whether a statute which provides for the tax sale of real estate with no more than notice by publication to the property owners, violates the due process clause of the Fourteenth Amendment on its face. In addition, this Court should note probable jurisdiction to decide the substantial question of just what notice is sufficient to be considered actual notice within the meaning of the due process clause of the Fourteenth Amendment.

It seems clear, in sum, that Section 140.170, R.S.Mo. violates the due process clause of the Fourteenth Amendment on its face. It is apparent that the procedures employed by the appellee Collector to notify appellant were not reasonably calculated to apprise appellant of the tax sale, and therefore, violated her due process rights. *Mullane,* 339 U.S. at 315.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

APPENDIX A

STATE OF MISSOURI

SS.

COUNTY OF ST. LOUIS

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS

STATE OF MISSOURI

Division No. 19

Cause No. 432213

GLADYS L. TRAPF,
Plaintiff,

vs.

OSCAR LOHR, et al.,
Defendants.

ORDER, JUDGMENT AND DECREE OF COURT

The Court finds that the notice published by Defendant, George C. Leachman, Collector, was defective as a matter of law in that it contained abbreviations not authorized by law and, therefore, the said notice does not give the required statutory notice prior to sale. Sections 140.030, 140.070 and 140.180, RSMo 1978.

The Court further finds that the other grounds for relief prayed by the petitioner are without merit.

WHEREFORE, THE COURT ORDERS, ADJUDGES AND DECREES that the Collector's Tax Sale and the Collector's Deed of August 27, 1979 by and is hereby set aside and

held for naught for the property described therein as "Locator Number 27G132406 125 W. Cartwright Ave., Gillick Longwood Subd, Blk 2, Lot 25 0030 x 0120" and that the title to the said property be quieted in favor of the plaintiff as against defendants.

Costs are taxed against defendant, Oscar Lohr.

/s/ Melvyn W. Wiesman, Judge

Done this 25th day of February, 1982.

APPENDIX B

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION TWO

Nos. 45658 and 45670

GLADYS L. TRAPF,
Plaintiff-Respondent,

vs.

OSCAR LOHR, and GEORGE C. LEACHMAN,
Collector of Revenue for St. Louis County, Missouri,
Defendants-Appellants.

Appeal from the Circuit Court of St. Louis County
Hon. Melvyn Wiesman, Judge

OPINION FILED: August 9, 1983

Defendants Oscar Lohr and George C. Leachman, Collector of Revenue for St. Louis County, appeal from a circuit court judgment quieting title to a parcel of real estate in respondent Gladys L. Trapf. Respondent brought this action to set aside a tax collector's deed which was given to appellant Lohr by appellant Leachman, Collector of Revenue. The real estate was sold in accordance with the provisions of the Jones Munger Law, Chapter 140 RSMo. 1978.[1] The judgment is reversed.

---

[1] All statutory references are to the Revised Statutes of Missouri 1978 unless otherwise designated.

Respondent and her husband purchased the real estate in question shortly after their marriage for between $9,000 and $9,500. In 1974, the marriage of respondent and her husband was dissolved. The court which granted the dissolution awarded the real estate, which was the marital residence, to respondent, who was also obligated to pay the real estate taxes and mortgage installments.

Respondent did not record the change in title from her and her husband's name to her name alone. The tax bills thus continued to be issued and mailed in the joint names of respondent and her ex-husband. They were sent to her residence, title to which is in dispute here, but she forwarded them unopened to her ex-husband. He did not pay the bills and did not inform respondent that the taxes were delinquent.

Because of respondent's failure to apprise herself of the real estate taxes levied on her property, the real estate taxes were unpaid and became delinquent for the years 1974, 1975 and 1976. When respondent finally learned of the delinquent taxes, she wrote a letter dated April 15, 1978 to appellant Leachman which in substance asked for advice on how respondent could retain her home and on whether she could pay the back taxes in installments. On April 19, 1978 the county collector's office sent the following reply:

> This is to advise that the parcel concerned was offered for sale during the 1977 St. Louis County delinquent tax sale. If the 1974 and 1975 taxes are not paid with publication costs before the fourth Monday in August 1978 this parcel will be offered for sale to the highest bidder.
>
> As of this date this parcel is recorded in the name of Edward N. and Gladys L. Trapf. Apparently you have not recorded this parcel in your name so that future bills could be mailed to you. Between now and August, interest will accrue at the rate of one percent per month on each bill.

When you are ready to pay the oldest bill please call this office and we will advise you the amount due.

When the delinquent taxes remained unpaid, the property was put up for sale, for the third time, in 1979. Notice of the 1979 tax sale was published in the St. Louis Countian newspaper as follows:

GILLICK LONGWOOD SUBD

Trapf, Edward N. & Gladys L, Loc No. 27G132406 blk 2, lot 25, 30 x 120, 125 W. Cartwright Ave; '74 $231.51; '75 $219.17; '76 $210.52; fee $18.00; total $679.20

Respondent paid George C. Leachman, collector, $166.75 by a check dated April 30, 1979. There was no evidence showing whether it was paid for real estate taxes or personal property taxes. At any rate, the amount paid was less than the amount owed for any single year's taxes in 1974, 1975 or 1976.

Appellant Lohr purchased the real estate at the 1979 tax sale for $679.20. Upon learning of the tax sale, respondent brought this action to set aside the tax collector's deed.

The trial court rendered its judgment in favor of respondent:

> "The court finds that the notice published by Defendant George C. Leachman, Collector, was defective as a matter of law in that it contained abbreviations not authorized by law and, therefore, the said notice does not give the required statutory notice prior to sale. Sections 140.030, 140.170 and 140.180, RSMo. 1978."
>
> "The Court further finds that the other grounds for relief prayed by the petitioner are without merit."

Appellants contend that, contrary to the finding of the trial court, the abbreviations contained in the notice of the tax sale comply with the statutory scheme set out in Chapter 140. This court agrees.

Section 140.150 allows the county collector to sell "... [a]ll lands and lots on which taxes are delinquent and unpaid..." provided that all the requirements of Chapter 140 are met. § 140.150.1. One of the prerequisites of a delinquent tax sale is the publication of notice of the delinquent lands and lots to be sold, the taxes owing on each parcel, the record owners of the property to be sold and a description of the land. § 140.170. Section 140.180 sets forth abbreviations which may be used in the published notice:

> 140.180. Lawful abbreviations. - 1. In all advertisements, notices, lists, records, certificates, deeds or other papers, required to be made by or under any of the provisions of this chapter, it shall be lawful to use letters, figures and characters, as follows:
>
> (1) Letters may be used to denote township, range, boundaries, parts of section, parts of lots or blocks, or other subdivisions of real estate, in the following manner: "T" for township, "R" for range, "L" for lot, "B" for block, "N" for north, "E" for east, "S" for south and "W" for west, or any combination or combinations of the four last mentioned letters to denote parts of sections, lots, blocks, or other subdivisions of real property.
>
> * * *
>
> 2. Any and all descriptions of real estate made under the provisions of this chapter by the use of letters, figures and characters, as provided in this section, when so made that the land or lot may be identified and located, shall be deemed and held to be good, valid and complete, as though the same had been written out in full.
>
> * * *

The notice of the tax sale used abbreviations "subd," to mean subdivision, "loc" to mean locator, "no" to mean number, "blk" to mean block and "ave" to mean avenue.

None of these abbreviations are expressly authorized by § 140.180. The issue is thus whether abbreviations may be used which are not expressly set forth in § 140.180.

Where the abbreviations "ex." for except, "a" for acres, and "cor" for corner were found on tax bills and assessment rolls the assessment was not invalid under § 7707 RSMo. 1889 (now § 140.180), even though the abbreviations were not expressly authorized by § 7707, because "...it was not the intention of this statute to exclude the use of well-known abbreviations..." *State ex rel. Wyatt v. Vaile,* 122 Mo. 33, 26 S.W. 672, 676 (1894).

In *Miller v. Keaton,* 236 Mo. 694, 139 S.W. 158 (1911), the court held that sheriff's tax deed was not "...void because of the use of abbreviations which are well understood in describing land." 139 S.W. at 161. Unfortunately, the court did not set forth the abbreviations which were used in the tax deed. However, a copy of the record in *Miller v. Keaton,* which was supplied to this court by the Missouri Supreme Court library, reveals that, in addition to abbreviations expressly permitted by what is now § 140.180, the deed contained the abbreviations "no." and "twp," which meant "number" and "township," respectively.

Finally, the abbreviations "pt." for part and "R. of W." for right-of-way were permitted in a tax bill. *Elsberry Drainage District v. Seerley,* 329 Mo. 1237, 49 S.W.2d 162, 166 (1932).

Respondent argues that *Elsberry Drainage District, supra; Miller v. Keaton, supra;* and *State ex rel. Wyatt v. Vaile, supra,* are inapposite because none involved the abbreviations in a notice of the tax sale. In particular, *Elsberry Drainage District, supra,* involved a tax bill; *Miller v. Keaton, supra,* a deed; and *State ex rel. Wyatt v. Vaile, supra,* a tax bill and assessment rolls. Respondent maintains that while abbreviations not found in § 140.180 may be used in other documents, only the abbrevia-

tions listed in § 140.180 may be used in a notice of tax sale. The contention is without merit.

By its very terms, § 140.180 applies with equal force to all "...advertisements, notices, lists, records, certificates, deeds, or other papers required to be made by or under any of the provisions of this chapter..." The statute makes no distinction between abbreviations which may be used in a notice, and those which may be used in other required documents.

The rule thus is that abbreviations other than the ones expressly set forth in § 140.180 may be employed in descriptions of property so long as the abbreviations are well-understood. *State ex rel. Wyatt v. Vaile, supra.* Inasmuch as the abbreviations used in the notice of the tax sale would be understood by a reasonably intelligent person, the description in question is sufficient.

Respondent cites *Costello v. City of St. Louis,* 262 S.W.2d 591 (Mo. 1953) in which a tax sale, also under the Jones Munger Law, Chapter 140, was challenged. Although there is a reference to the abbreviations authorized by the statute in *Costello,* there is no holding that other, well-understood, abbreviations may not be used. The collector's deed was held to be void on its face because the property in *Costello* was not described with reasonable certainty in the notice and also because the property was sold for an unconscionably inadequate price. 262 S.W.2d at 595[4], 596[6].

The property in the case under review was described with reasonable certainty in the notice. Inadequacy of consideration is no longer grounds for voiding a tax sale deed in Missouri. *Powell v. County of St. Louis,* 559 S.W.2d 189, 196 (Mo. banc 1977), overruling *Costello v. City of St. Louis, supra.*

One of the cases cited in *Costello v. City of St. Louis, supra,* is *Lowe v. Ekey,* 82 Mo. 286 (Mo. 1884) in which the Supreme Court said at page 290: "It is quite obvious that under the max-

im *expressio unius,* etc., letters can only be used in describing land, as provided in that section and not otherwise," meaning the then applicable statutory section similar to § 140.180. *Lowe* seems to support respondent; but ten years later the Supreme Court in *State ex rel. Wyatt v. Vaile, supra,* said of the quoted language in *Lowe v. Ekey* that it was not intended to exclude the use of well-understood abbreviations. 26 S.W. at 676.

Respondent also contends that the notice violated Mo. Const. Art. X Section 13 because the published notice did not contain all the information required by law. Article X Section 13 provides:

> "No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law."

Because the notice contains all the information required by § 140.150 which tracks the language of Article X, Section 13, there was no violation of the constitution. The notice of sale included "all other information required by law," as well as the names of the record holders.

Finally, respondent argues that even if the abbreviation used by appellant Leachman are permitted under § 140.180, the trial court's judgment quieting title in respondent must be upheld because the notice of publication requirement of § 140.170 violates respondent's right to due process under U.S. Const. Amend. XIV and Mo. Const. Art. I § 10. The notice by publication provision is consistent with due process. *McMullin v. Carter,* 639 S.W.2d 815, 817[1] (Mo. banc 1982).

This court sympathizes with respondent. It is unfortunate that she must lose her residence. But to rule otherwise may call into question the validity of large numbers of tax sales in which

the notices described real estate with reasonable certainty but which may have contained well-understood abbreviations which are not included in § 140.180.1(1).

The judgment is reversed.

/s/ Robert O. Snyder,
Presiding Judge

Robert G. Dowd, Chief Judge Concurs

Kent E. Karohl, Judge Concurs

APPENDIX C

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION TWO

Nos. 45658 and 45670

GLADYS L. TRAPF,
Plaintiff-Respondent,

vs.

OSCAR LOHR and GEORGE C. LEACHMAN,
Collector of Revenue for St. Louis County, Missouri,
Defendants-Appellants.

Appeal from the Circuit Court of St. Louis County
Hon. Melvyn Wiesman, Judge
OPINION FILED: August 31, 1983

TRANSFER TO SUPREME COURT AFTER OPINION

This court's opinion was filed on August 9, 1983, and plaintiff-respondent's motion for rehearing and application for transfer was filed on August 24, 1983. The motion to transfer is granted.

The opinion reversed a trial court judgment which set aside a tax collector's deed because the notice published by the collector was defective as a matter of law in that it contained abbreviations not authorized by law. This court reversed, holding that the abbreviations used were well understood and permissible under the judicial interpretations of the statute.

Respondent had also challenged the constitutionality of the Jones-Munger Act, Chapter 140, RSMo (1978) in her initial petition in the trial court and preserved the constitutional challenge in her brief on appeal. She claimed insufficient notice which violated her due process rights. This point was denied based on *McMullin v. Carter,* 639 S.W.2d 815, 817 [1] (Mo.banc 1982).

Since this court's opinion was filed, the Supreme Court of Missouri filed its opinion in *Oscar Lohr v. Cobur Corporation, et al.,* No. 64021, August 16, 1983. In *Lohr,* relying on a recent United States Supreme Court decision in *Mennonite Board of Missions v. Richard C. Adams,* ____ U.S. ____, 77 L.Ed.2d 180, 103 S.Ct. ____, the Missouri Supreme Court held that notice by publication alone is insufficient to apprise the beneficiary of a deed of trust of a tax sale when the beneficiary's name is disclosed in the deed of trust and publicly recorded. The court held that due process required notice by mail.

Lohr v. Cobur, supra, calls into question the decision in *McMullin v. Carter, supra.* In *McMullin,* it was held that notice by publication of tax sales as required by the Jones-Munger Act was consistent with due process.

In the instant case a question was raised about the sufficiency of notice, not to the beneficiary of a deed of trust, but to the owner of real property which is sold for delinquent taxes under the Jones-Munger Act. The question is whether notice by publication is sufficient to protect the owner's rights under the due process clause of the Fourteenth Amendment to the United States Constitution and Art. V, § 10 of the Missouri Constitution.

Because the validity of a statute of the State of Missouri has been challenged and the constitutional question raised at the earliest opportunity, and preserved, the Missouri Supreme Court has jurisdiction under Art. V, § 3 of the Missouri Constitution.

Further, the question of the sufficiency of notice in tax sales is of general interest or importance because under the state of the law after *Mennonite Board of Missions v. Richard C. Adams, supra,* and *Lohr v. Cobur, supra,* titles to realty transferred by tax collectors' deeds throughout the state may be called into question, and a controlling decision on this question deserves to be expedited by the Missouri Supreme Court which must make the final determination.

The cause is transferred to the Missouri Supreme Court under the provisions of Art. V, § 10 of the Missouri Constitution.

/s/ ROBERT O. SNYDER
Presiding Judge

APPENDIX D

SUPREME COURT OF MISSOURI
EN BANC

No. 65344

GLADYS L. TRAPF,
Plaintiff-Respondent,

vs.

OSCAR LOHR and GEORGE C. LEACHMAN,
Collector of Revenue for St. Louis County,
Missouri,
Defendnts-Appellants.

APPEAL FROM THE CIRCUIT COURT OF
ST. LOUIS COUNTY

Honorable Melvyn Wiesman, Judge

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Duplicate
Of Filing On
March 20, 1984
In Office Of
Clerk
Supreme Court

****

Gladys Trapf sued to quiet title to real estate located in St. Louis County formerly owned by her and sold at a tax sale to Oscar Lohr. The trial court set aside the collector's deed on the

ground that notice to Mrs. Trapf of the impending tax sale was constitutionally inadequate. The Court of Appeals, Eastern District, transferred the case to this Court after opinion because of the challenge to the constitutionality of Chapter 140, RSMo 1978. The judgment of the trial court is reversed.

Appellants assert that the notice provided to Mrs. Trapf was constitutionally sufficient. They contend that the abbreviations used in the published notices of sale were satisfactory and readily understandable; that Chapter 140 is constitutional on its face; and that the methods actually employed to notify Mrs. Trapf were also constitutionally sound. Mrs. Trapf, as she did at trial, denies in all respects the constitutional sufficiency of the notice provided her and the notice provided by statute and urges affirmance of the trial court's decision.

Gladys Trapf and her husband Edward purchased the property in question shortly after their marriage. The deed to the real estate was recorded in both of their names as husband and wife. Mr. and Mrs. Trapf were divorced in 1974 and, as part of the dissolution decree, the court awarded the property to Mrs. Trapf; she was obligated under the decree to pay all real estate taxes and mortgage installments. Mrs. Trapf failed to record the change in ownership of the property to reflect her status as sole owner. Accordingly, tax bills issued by the Collector continued to be addressed to "Mr. and Mrs. Edward N. Trapf" and mailed to the address of the property in question, at which Mrs. Trapf still resided. Mrs. Trapf forwarded these bills unopened to her ex-husband upon receiving them.

In 1978, Mr. Trapf notified his ex-wife of the delinquent taxes owed to the Collector. Mrs. Trapf then wrote a letter dated April 15 of that year to appellant Leachman in which she expressed her confusion concerning her tax liability and asked for advice on how she might clear up any arrearage. On April 19 the County Collector's office replied in a personal letter to Mrs. Trapf that her property would be sold in August 1978 if her

taxes for 1974 and 1975 were not paid prior to August. The letter also pointed out that the property was still recorded jointly in the names of Mr. and Mrs. Trapf; this accounted for the joint form of address on the notices. Finally, the letter requested that Mrs. Trapf arrange with the Collector's office for payment of the oldest bill.

The delinquent taxes remained unpaid, however, and the Collector advertised the property for sale by publishing further notice of the upcoming 1979 sale in the St. Louis Countian newspaper. On April 30, 1979, Mrs. Trapf mailed a check payable to Collector Leachman in the amount of $166.75. It is unclear whether this sum represented a payment of real estate or personal property taxes. In any case, the amount paid was less than the amount owed for any single year's delinquent real estate taxes. The sale took place, and appellant Oscar Lohr bought the property through an agent for $679.20.

This Court has recently addressed the constitutional implications of notice by publication and mailed notice in the tax sale context. *Schwartz v. Dey,* No. 65237, ____ S.W.2d ____ (Mo. banc 1984); *Bankers Union Life Insurance Co. v. Floy Hanks & Mistwood,* 654 S.W.2d 888 (Mo. banc 1983); *Lohr v. Cobur Corp.,* 654 S.W.2d 883 (Mo. banc 1983). In each case this Court recognized that holdings of the United States Supreme Court concerning the requirements of due process may affect the notice to be afforded holders of property interests at stake in the sale of property for delinquent taxes. *See, e.g., Schwartz v. Dey, supra,* at ____. But each case is distinguishable from the instant case: The parties in the cited cases never received notice of pending proceedings against their property interests until the property had been sold; in no case did a party actually receiving notice of a tax sale question the constitutionality of tax sale procedures.

By contrast, Mrs. Trapf received mailed notices addressed to her and her ex-husband at her residence. She also received a

personal letter from the Collector's office indicating what steps needed to be taken in order to settle her accounts and prevent sale of the property. The letter explained the source of any possible confusion concerning the presence of her ex-husband's name on the previous notices sent by the Collector. Mrs. Trapf also testified that she knew that the terms of her divorce decree required her to pay all real estate taxes due on the former marital residence.

At some point a property owner's presumptive duty to preserve his property outweighs the responsibility of a tax collector to provide more extensive forms of notice. The Collector did not owe Mrs. Trapf the duty of advising her to open mail plainly addressed to her; nor was he required to initiate the process of re-recording the deed to the property in question so that mail would be addressed to Mrs. Trapf alone. Indeed, the Collector had no notice of the changed status of ownership until Mrs. Trapf informed his office of her divorce in her letter. No case cited or reported requires a tax collector under circumstances such as these to do more than supplement published notices with notice mailed to an interest-holder's last known address. Given that Mrs. Trapf received these mailed notices, received a prompt letter in reply to her inquiry, and knew of her obligation to pay taxes, it cannot be said that she was denied due process of law. Nor can it be said under these facts that the use in published notices of abbreviations more specific than those provided by statute in any way prevented Mrs. Trapf from taking steps to preserve her interest in the property. §140.180, RSMo 1987.

It is true that tax sales may by their nature provide windfalls for purchasers seeking bargains in the real estate market, and that tax sales can work hardships upon those whose interests are terminated. Nevertheless, it is the Collector's legal duty to sell property for taxes owed, §§ 140.010, 140.190, RSMo 1978; and this case presents no facts or circumstances requiring the tax col-

lector to undertake more extensive efforts than were actually and successfully undertaken to notify the property owner prior to that sale. *But see Covey v. Town of Somers,* 351 U.S. 141 (1956). The procedures actually employed by the Collector pass constitutional muster.

The judgment of the trial court is reversed and title to the property is vested in the purchaser, appellant Lohr, pursuant to the collector's deed.

Andrew Jackson Higgins, Judge

All concur.

APPENDIX E

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
Post Office Box 150
Jefferson City, Missouri 65102

April 16, 1984

Mr. Blair K. Drazic
1015 Locust St.
St. Louis, MO 63101

In re: Gladys L. Trapf vs. Oscar Lohr, and George C. Leachman, Collector of Revenue for St. Louis County, Missouri
No. 65344

Dear Mr. Drazic:

This is to advise that the Court this day entered the following order in the above-entitled cause:

Resp.'s motion for rehearing overruled.

Very truly yours,

/s/ Thomas F. Simon
Clerk

cc: Thomas W. Wehrle
Morris E. Stokes

APPENDIX F

IN THE SUPREME COURT OF THE
STATE OF MISSOURI

No. 65344

GLADYS L. TRAPF,
Appellant,

vs.

OSCAR LOHR and
GEORGE C. LEACHMAN,
Collector of Revenue for St.
Louis County, Missouri,
Appellees.

****

Duplicate
Of Filing On
July 9, 1984
In Office Of
Clerk
Supreme Court

****

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Gladys L. Trapf, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Missouri, ordering title to real estate to be vested in the Appellee, Oscar Lohr, entered in this action on April 16, 1984.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

PADBERG, McSWEENEY,
SLATER & MERZ
A Professional Corporation
Attorneys for Gladys L. Trapf,
Appellant

By /s/ Godfrey P. Padberg #14953
1015 Locust Street, Suite 800
St. Louis, Missouri 63101
621-3787

Certificate of Service

A copy of the foregoing mailed this 5th day of July, 1984 to: Don R. Williams, Assistant County Counselor, Attorney for Appellee Leachman, 41 South Central Avenue, Clayton, Missouri 63105, and William C. Barnett, Attorney for Appellee Lohr, 226 South Meramec Avenue, Clayton, Missouri 63105.

/s/ Godfrey P. Padberg

APPENDIX G

Amendment XIV, Section 1, United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX H

Section 140.170.1 Revised Statutes of Missouri:

The county collector shall cause a copy of the list of delinquent lands and lots to be printed in some newspaper of general circulation published in the county, for three consecutive weeks, one insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth Monday in August.

APPENDIX I

Since the constitutionality of a state statute is drawn in question by appellant in this cause, and since the state is not a party to this cause, 28 U.S.C. Section 2403(b) may be applicable.

No court in this cause has certified to the Attorney General of the State of Missouri the fact that the constitutionality of a Missouri Statute is drawn into question.

28 U.S.C. Section 2403(b):

> (b) In any action, suit or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Supreme Court, U.S.
FILED
OCT 13 198-
ALEXANDER L. STEVAS
CLERK

No. 84-83

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GLADYS L. TRAPF,
Appellant,

vs.

OSCAR LOHR and GEORGE C. LEACHMAN,
COLLECTOR OF REVENUE FOR ST. LOUIS COUNTY, MISSOURI,
Appellees.

On Appeal From The Supreme Court Of The State Of Missouri

APPELLEE GEORGE LEACHMAN'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GLADYS L. TRAPF,
Appellant,

VS.

OSCAR LOHR and GEORGE C. LEACHMAN,
COLLECTOR OF REVENUE FOR ST. LOUIS COUNTY, MISSOURI,
Appellees.

On Appeal From The Supreme Court Of The State Of Missouri

APPELLEE GEORGE LEACHMAN'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

MOTION OF APPELLEE

Appellee George C. Leachman moves this Court to dismiss Appellant's appeal for want of jurisdiction in this Court, or, in the alternative, to affirm the decision of the Supreme Court of Missouri en banc entered on March 20, 1984, from which the Appellant has taken an appeal pursuant to 28 U.S.C. 1257(2).

STATEMENT

The appellee, George C. Leachman, is the Collector of Revenue for St. Louis County, Missouri, and collects real estate taxes pursuant to Chapter 140 R.S.Mo., known as the Jones-Munger Act. As a courtesy, appellee sends yearly tax bills to the owners of over 350,000 taxable real estate parcels in St. Louis County in autumn of each year, and in Missouri, real estate taxes become delinquent if not paid by January 1st of the next year. In April of each year, computerized notice is likewise mailed to all owners whose taxes are delinquent. The evidence in this case is undisputed that the appellant wrote to appellee in April of 1978 concerning her delinquent taxes and that she had previously received tax bills addressed to herself and her ex-husband but did not open them, yet admitted that by the terms of her 1974 dissolution of marriage, she got the house and had to pay the taxes, yet failed to record the property in her name alone and failed to pay any real estate taxes in 1974, 1975, 1976 and only made her first inquiry in 1978. The facts are clear that the appellant was smart enough to keep up her yearly home insurance payments, yet the appellant would have the court believe she was too "inexperienced" to deal with her taxes on a yearly basis.

None of the lower courts believed from the facts that appellant was denied due process. The trial court found for appellant originally because that Court felt that the abbreviations used in the notice were not authorized by statute, but found the constitutional issue to be "without merit". The Missouri Court of Appeals in St. Louis reversed that decision on the ground that the abbreviations were proper, in its view, and that the procedures used by appellee in notifying appellant did not deprive her of due process.

Shortly after that decision, the case of *Mennonite Board of Missions v. Adams,* 462 U.S. ____, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983), was handed down by this court, and because of the

possible effect of that case upon tax sales, the Court of Appeals transferred the case (on appellant's motion) to the Supreme Court of Missouri for its consideration. In its decision on this case, as it mentions in its opinion (appellant's brief, page A-16), the Supreme Court of Missouri En Banc was aware of another tax sale case styled *Lohr v. Cobur,* 654 S.W.2d 883 (Mo. banc 1983), in which it followed the *Mennonite* case regarding a deed of trust, so the Missouri Supreme Court was well aware of the decision. Nevertheless, in deciding the case at bar, the Supreme Court also reversed the trial court and concluded that the facts showed that the appellant was not deprived of due process because of what the appellee actually did to make her aware of the delinquent taxes and the sale. At no point did the Supreme Court declare Section 140.170 R.S.Mo. to be constitutional or unconstitutional because the facts of the case made it unnecessary to do so.

BRIEF IN SUPPORT OF APPELLEE'S MOTION

I. This Court Lacks Appellate Jurisdiction

This Court is without appellate jurisdiction pursuant to 28 U.S.C. 1257(2) because this case does not involve a substantial federal question. The Missouri Supreme Court did not directly pass upon the constitutionality of Section 140.170 of the Missouri Revised Statutes of 1978, as claimed by appellants, because the case turned on the court's finding of facts.

What is apparent from the facts is that even assuming that Missouri Statute Section 140.170 required mailing yearly tax bills in September and tax delinquency and/or tax sale notices each April, as was actually done in this case involving appellant's property, the appellant would complain that she had been denied due process. In other words, it would have made no difference in this case if the requirements were in the statute, because as a matter of what three Missouri Courts believed to be the facts, no violation of due process occurred. Inasmuch as

there is no substantial federal question for the Court to consider, it lacks jurisdiction and for this reason, the appeal should be dismissed.

II. If This Court Finds Jurisdiction It Should Affirm The Lower Court Decision

In his alternative to his motion to dismiss, appellee has moved this Court to affirm the decision of the Missouri Supreme Court En Banc of March 20, 1964. That Court took the *Mennonite* case into consideration in reviewing the case at bar, for it had based its decision in the earlier case of *Lohr v. Cobur Corp.*, 654 S.W.2d 883 (Mo. Banc 1983), on the changes brought about by *Mennonite* and was well aware of its impact upon delinquent real estate tax sales as they affected interests other than those of the owner of record. In this case, however, no interest was affected except that of the resident owner, who apparently ignored the tax sale position of her property after having been advised of it and making inquiry about it.

Certainly a line must be drawn somewhere in the determination of how far the appellee must go to notify taxpayers of their obligations under the tax laws of Missouri, and under the facts of this case, the Missouri Supreme Court unanimously concluded that the appellee had gone far enough. For the foregoing reasons, the judgment of the Supreme Court of Missouri should be affirmed.

CONCLUSION

For the foregoing reasons, Appellant's appeal should be dismissed for want of jurisdiction in this Court, or, in the alternative, the judgment of the Missouri Supreme Court should be affirmed.

Respectfully submitted,

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